United States District Court
for the
District of Massachusetts

HECTOR PINEIRO, Plaintiff v. GARY GEMME, WORCESTER CHIEF of POLICE and the CITY OF WORCESTER, Defendants	)))))))))	Civil Action No. 4-10-CV-40262-FDS

Motion To Dismiss or Stay This Proceeding on Abstention Grounds Due to the Pendency of a State Action on the Same Matter

Now come the Defendants Gary Gemme, Worcester Chief of Police, and the City of Worcester, by and through their undersigned counsel, and hereby respectfully move this Court, pursuant to Fed. R. Civ. P. 12(b)(1), to either dismiss this action or enter an order staying this action due to the pendency of a proceeding in state court involving this same matter, Hector Pineiro vs. City of Worcester – Chief of Police, Commonwealth of Massachusetts, District Court Department, Docket Number 2010-62CV003795.

In support of this Motion, Defendants refer the Court to their Memorandum of Reasons filed herewith.

GARY GEMME, and
CITY OF WORCESTER,

By their attorney,

/s/ David M. Moore

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I, David M. Moore, hereby certify that Defendants' counsel has complied with Local Rule 7.1(A)(2) by advising opposing counsel that the within Motion would be filed and attempting in good faith to resolve or narrow the issue; however, Defendants' counsel recognizes that, as the present Motion requests the withdrawal of Plaintiff's complaint, that it is a rather futile exercise to confer to narrow the issues given the unlikelihood that Plaintiff would be willing to withdraw the pleading.

/s/ David M. Moore
David M. Moore
City Solicitor

CERTIFICATE OF SERVICE

I, David M. Moore, hereby certify that on this 24th day of January, 2011, I served the within Defendants' Motion to Dismiss or Stay on Abstention Grounds upon Plaintiff by providing a copy of the same to Plaintiff's counsel of record, Hector E. Pineiro, Esq., via the United States District Court's electronic notification system.

/s/ David M. Moore
David M. Moore
City Solicitor